

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

...

SUMMONS FOR JUDGMENT NO.297 OF 2006

IN

SUMMARY SUIT NO.953 OF 2006

...

M/s.Sah Petroleums Ltd. ...Plaintiff

v/s.

M/s.Emptee Poly Yarn Ltd. ...Defendant

...

Mr.S.S.Rai for the Plaintiff.

Mr.R.D.Dave i.b N.N.Vaishnwa & co. for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 3RD OCTOBER, 2006

P.C. :

1. The Plaintiff has filed this suit for recovery of the price of the goods. According to the Plaintiff amount of Rs.3,01,061/- remained due to the Plaintiff from the Defendant as the price of the goods that were supplied by the Plaintiff to the Defendant. Perusal of the letter dated 29-8-2005 which was addressed by the Defendant to the Plaintiff shows that the Defendant admitted that the amount of Rs.3,01,061/- remained due to be paid by the Defendant to the Plaintiff. It appears that the Defendant had placed the order for further supply of the goods with the Plaintiff and the Defendant promised that he will make payment of this balance amount when future supply is made by the Plaintiff. The Plaintiff, however, informed the Defendant that the Plaintiff can not make any further supply.

2. The defence of the Defendant is that because the Plaintiff did not make further supply for which the order was placed by the Defendant, the Defendant has suffered loss and because the Defendant suffered loss

he is not liable to pay the amount of Rs.3,01,061/- which is admittedly due to the Plaintiff from the Defendant.

3. It is clear that the liability of the Defendant to pay to the Plaintiff an amount of Rs.3,01,061/- is admitted. It is also admitted that this is unpaid price of the goods admittedly supplied by the Plaintiff to the Defendant. If according to the Defendant he has suffered any loss, because the Plaintiff did not make any further supply, in my opinion, the remedy of the Defendant lies in instituting a suit against the Plaintiff for recovery of damages. The Defendant is not justified in withholding the payment of the unpaid price of the goods which were admittedly received by the Defendant.

4. Thus, the defence offered by the Defendant has no substance and therefore, the Defendant is not entitled to any leave to defend the suit. Summons for the judgment is, therefore, granted. The suit of the Plaintiff is decreed in terms of prayer clauses (a) & (b) of the suit. Refund of court fees as per rules.

...